SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 16 2016
ARTHUR JOHNSTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MILLSAPS COLLEGE **PLAINTIFF**

VS. **CIVIL ACTION NO.** 3:16-cv-193 CWR-LRA

LEXINGTON INSURANCE COMPANY **DEFENDANT**

COMPLAINT
(Jury Trial Requested)

Millsaps College ("Millsaps" or "Plaintiff") asserts this Complaint against Defendant Lexington Insurance Company ("Lexington") stating:

PARTIES

1. The Plaintiff, Millsaps College, is an institution of higher learning, incorporated in the State of Mississippi with its principal place of business at 1701 North State Street, Jackson, Mississippi 39201.

2. The Defendant, Lexington Insurance Company, is a foreign insurance company incorporated in the State of Delaware, with its principal place of business in the Commonwealth of Massachusetts.

3. Lexington may be served with process via the Mississippi Commissioner of Insurance in accordance with Mississippi Code §83-21-1 et seq. and Mississippi law.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. § 1332, as complete diversity of citizenship exists between Millsaps and Lexington. The amount in controversy exceeds $75,000.

5. The Court has personal jurisdiction over all parties. Lexington is subject to jurisdiction pursuant to Mississippi's long-arm statute Miss. Code Ann. §13-3-57.

6. Venue is appropriate in this district and division pursuant to 28 U.S.C. § 1391.

FACTS

1. Millsaps College is a renowned and historic college located in the heart of Jackson, Mississippi. Millsaps has numerous iconic and landmark buildings and structures on its picturesque campus.

2. On March 18, 2013, a catastrophic hailstorm struck the Jackson, Mississippi area, including Millsaps College.

3. The entire campus was pelted with hail, causing widespread property damage to Millsaps College, including buildings, structures and other property.

4. The National Weather Service declared the March 18, 2013, hailstorm event to be a severe weather event.

5. According to the report of the National Weather Service: "The extremely large hail in a large populated region and widespread area affected with extreme hail damage will likely cause the figure of damages in dollars to be staggering. . . . The amount of damages to the Jackson metro area are staggering and will likely be an event to remember for years to come."

6. Millsaps provided prompt, timely and adequate notice to its insurers, including Lexington, of its loss due to hail.

7. The "Property Claims – Notice of Loss" sent to Lexington Insurance Company states: a) "Location of Loss: Millsaps College Campus" and b) "Description of Occurrence: Hail Damage".

8. Lexington retained the services of Cunningham Lindsey as its agent authorized to adjust, handle and investigate the Millsaps claim on behalf of Lexington Insurance Company.

9. Specifically, Lexington Insurance Company retained Dave Reger, Executive General Adjuster employed by Cunningham Lindsey, to represent Lexington Insurance Company, andauthorized by Lexington Insurance Company to handle Millsaps' hail damage claim.

10. Cunningham Lindsey and its employees were and are the agents of Lexington so that Lexington is vicariously liable for their acts and omissions relative to Millsaps' claim.

11. Dave Reger spent approximately two days the week of the hailstorm on the Millsaps College campus investigating and adjusting the damage to the Millsaps College property in light of Millsaps' claim and loss.

12. During Dave Reger's adjustment in March 2013, he advised Millsaps that numerous items of property damaged by the hail were not covered under the policy. He stated, wrongly, that as certain property only suffered "cosmetic damage" or were not "functionally impaired" the loss was not compensable under the policy.

13. Mr. Reger advised that he would only approve limited repairs to certain property and structures.

14. As it turned out, this abbreviated and inadequate investigation by Dave Reger during the week of the hailstorm is the primary investigation now relied upon by Lexington to evaluate Millsaps' claim.

15. Though promising to promptly return and perform a more comprehensive adjustment and investigation of the property damage, Cunningham Lindsey and Dave Reger did not do so. In fact, Dave Reger did not return to the Millsaps College campus until over one year

later and only then because of Millsaps' insistence upon a more thorough and accurate investigation and adjustment.

16. Dave Reger, the Lexington adjuster, prepared two "Proofs of Loss" for Millsaps' signature.

17. The first Proof of Loss dated May 9, 2013, was submitted for the policy limits of Millsaps' property insurance coverage with College Insurance Company in the amount of $750,000.

18. The second Proof of Loss prepared by Dave Reger was entitled "First Partial". This Proof of Loss was dated January 27, 2014.

19. Neither Proof of Loss was intended to be in any sense "final"; in fact the opposite. Dave Reger and Lexington understood and assured Millsaps that there were numerous outstanding items of claim left unresolved and in dispute.

20. But Lexington delayed taking steps to investigate or pay Millsaps for further loss or damage. Millsaps was concerned there had not been a fair, thorough investigation of the damage caused to its property, buildings and structures by the hail.

21. Nevertheless, despite Millsaps requests, Lexington and Dave Reger failed to make further payment.

22. Among other items, the need to replace Millsaps' clay tile roofs on its buildings and Millsaps' copper used for sheathing, gutters and roofing became central points of contention.

23. At Millsaps' insistence, Lexington's representative, Dave Reger, in August 2014, provided Millsaps a spreadsheet depicting Lexington's purported re-evaluation of Millsaps' loss or damage. The gist of this August, 2014 spreadsheet was that Lexington/Cunningham

Lindsay/Dave Reger only approved an additional approximate $24,000, an amount completely inadequate under the policy in light of Millsaps' loss.

24. Lexington sent a letter dated August 19, 2014. The letter claimed that Lexington's "investigation continues" and attempted, belatedly and wrongly, to set forth a "reservation of rights".

25. Millsaps, thereafter, requested that Dave Reger be replaced as the adjuster. Lexington insisted upon keeping the Cunningham Lindsey firm as its adjuster. Nevertheless, Lexington claimed to replace Dave Reger with Tom Sheets, a colleague of Dave Reger's at the Cunningham Lindsay adjusting firm.

26. Lexington promised to conduct a further investigation and evaluation of the property damage on the Millsaps campus. Lexington utilized Halliwell Engineering and Young & Associates, in addition to Cunningham Lindsay. These companies and their employees are also agents of Lexington for whom Lexington is vicariously liable for their acts and omissions.

27. Lexington and its retained companies visited the Millsaps campus numerous times, in 2014 and again in 2015, claiming to re-evaluate, investigate and adjust Millsaps' loss, claim and damage.

28. Lexington, its adjusters and retained companies, last visited the Millsaps campus in June 2015.

29. Meanwhile, Millsaps provided Lexington with all documents and information it requested of Millsaps. Millsaps obtained detailed cost estimates and proposals identifying and listing the items of property damaged, which were provided to Lexington. Millsaps' loss and damage to its property from the hail storm exceeds six million dollars.

30. Without providing the results of its investigations, Lexington attempted to negotiate with Millsaps College on what it termed a "global settlement" basis.

31. Lexington well understood that Millsaps College is a small liberal arts college with limited financial resources. Lexington further understood that the dollar value of the damage to Millsaps' property was in the millions of dollars.

32. Lexington wrongfully withheld payment of additional money to Millsaps while attempting to settle on a "global" basis.

33. On October 30, 2015, Millsaps wrote Lexington again demanding full payment of its claim. Millsaps pointed out that though it had provided detailed cost estimates and actual proposals from contractors who will perform the necessary work, Lexington had failed to provide Millsaps comparable evidence or documents.

34. Millsaps further pointed out that Lexington had failed to adjust Millsaps' claim in accordance with its insurance policy, failed to properly apply the valuation provision of its policy and wrongly instead insisted upon adjusting Millsaps' claim on a basis not in compliance with its policy.

35. The reports, investigation and analysis employed by Lexington demonstrate that Lexington continued to adjust, investigate and handle Millsaps' loss and claim not in compliance with the policy terms.

36. Finally, in December 2015, Lexington, in response to Millsaps' repeated demands, through its agent Tom Sheets with Cunningham Lindsey, submitted its revised claims analysis. Lexington claimed in part to rely upon reports of Halliwell Engineering Associates and Young & Associates.

37. At this same time, December 2015, Lexington tendered a check to Millsaps in the amount of $621,061.98. Lexington stated this amount was "undisputed" and constituted a "supplemental payment".

38. Lexington nevertheless stated that Millsaps' acceptance of the check was "subject to its [Lexington's] continuing reservation of rights". Lexington further conditioned Millsaps' acceptance of the check upon Millsaps signing a proof of loss stating that "The Whole Loss and Damage was $1,946,840.72."

39. Millsaps declined to accept or cash the check based upon Lexington's conditions. Lexington's conditions are improper and in violation of the policy. Lexington has wrongfully attempted to coerce Millsaps into accepting conditions nowhere found in the policy or Mississippi law by withholding money Lexington states is "undisputed".

40. Millsaps has provided all documents and information requested by Lexington.

41. Millsaps has complied with all requisite policy terms and conditions.

COUNT I.

BREACH OF CONTRACT

42. Millsaps re-alleges all of the above paragraphs.

43. Lexington Insurance Company issued policy number 019946501, effective 03/01/2013 to 03/1/2014, covering Millsaps College according to the policy's terms and conditions.

44. A copy of this policy is attached hereto as Exhibit "A".

45. The policy provides "all risk coverage". The policy "Declarations" page provides under Item 4 "Perils: all risks of direct physical loss or damage . . .".

46. The policy covers real and personal property per the Manuscript Form attached as an endorsement to the policy.

47. Paragraph 15 of the Manuscript Form states, in part:

> In case of loss, the basis of adjustment shall be as follows:
>
> **********
>
> B. REAL AND PERSONAL PROPERTY
>
> (1) Buildings, structures, furnitures and fixtures, machinery, equipment, improvements and betterments, shall be valued at the replacement cost new on the same premises, as of the date of replacement including the increased cost of demolition, if any, resulting from a loss covered by this policy, if such property is scheduled for demolition.

48. Lexington's duties owed include, but are not limited to:

a. the duty to hire, train, supervise and instruct adjusters, engineers, and other retained claims personnel including, but not limited to, Cunningham Lindsey, Halliwell Engineering and Young & Associates, and their employees and agents, to accurately investigate, adjust and determine the loss and damage suffered by Millsaps, and to correctly apply the policy of insurance to the facts of the particular losses;

b. the duty to hire competent, qualified professionals and ensure they perform their investigation and adjustment in compliance with the policy terms, under industry standards.

c. the duty to conduct a prompt and adequate investigation and adjustment;

d. the duty to have competent companies and people perform a detailed investigation and adjustment of Millsaps' damages and losses, in a timely and professional manner;

e. the duty to promptly and reasonably complete its investigation and adjustment, and pay Millsaps for its covered losses, within a reasonable amount of time and pursuant to the policy;

f. the duty to investigate, adjust and pay Millsaps' loss and claim consistent with the policy terms and conditions.

g. the duty to pay Millsaps for losses and damages covered under the subject policy of insurance;

h. the duty, implicit within every policy of insurance in the State of Mississippi, to treat Millsaps with good faith and fair dealing;

i. the continuing duty to investigate, evaluate, adjust and pay Millsaps' claim, even after the filing of suit; and

j. all other duties at law.

49. Lexington breached its contract of insurance with Millsaps, including, but not limited to the duties outlined above.

50. Lexington negligently, grossly negligently, maliciously, and/or with reckless disregard for the rights of Millsaps, breached its duties owed to Millsaps, including, but not limited to, the duties outlined above.

COUNT II.

TORTIOUS AND PUNITIVE CONDUCT

51. Millsaps re-alleges all of the above paragraphs.

52. Lexington, and its agents and employees, intentionally or negligently, or grossly negligently breached their respective duties by failing to properly handle, adjust, investigate and timely pay Millsaps for its loss, claim or damage.

53. Lexington, and its agents and employees, breached their duties to act with reasonable care, their contractual duties, and their professional duties, connected with the handling, investigation and adjustment of Millsaps' loss, claim and damage.

54. Lexington improperly delayed and refused to pay for the covered losses of Millsaps caused by the March 18, 2013 hailstorm without a legitimate, arguable, or reasonable basis.

55. Lexington's breach of its duties under the subject policy of insurance, and the other acts and omissions of Lexington, as described in the preceding paragraphs, constitute a bad faith breach of Lexington's duties and obligations to Millsaps under the subject contract of insurance; as well as a breach of Lexington's duty to treat Millsaps with good faith and fair dealing.

56. The conduct of Lexington set forth constitutes the separate and independent tort of bad faith breach of contract.

57. Lexington has acted with malice or gross negligence, in reckless disregard of Millsaps' rights.

58. Lexington willfully, wantonly and intentionally wronged Millsaps, or treated it with such gross and reckless negligence, or in such reckless disregard for its rights as is equivalent to such wrong. Millsaps is entitled to punitive damages in a sum to be determined at the trial of this cause, but which is sufficient to punish Lexington and deter other similarly situated parties from engaging in similar activity in the future.

DAMAGES.

59. Millsaps re-alleges all of the above paragraphs. As a result and proximate cause of the foregoing, Millsaps is damaged and demands:

a) actual damages in an amount in excess of six million dollars;

b) consequential damages, incidental damages, and damage including inconvenience, expenses, attorneys fees, expert fees, and all other costs, fees, expenses and damages;

c) all other incidental and consequential costs and expenses, including all attorneys fees, costs and expenses incurred in the prosecution of this action;

d) all pre-judgment and post-judgment interest as provided by law;

e) punitive damages;

f) all such further relief to which Millsaps may be entitled as a matter of law or at equity, or which the Court determines to be just and proper.

Dated: March 16, 2016.

MILLSAPS COLLEGE

By: ______________________________
Michael O. Gwin
Clifford B. Ammons

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